REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2970** (CTA Case No. 9300)
	Present:
- versus -	**RINGPIS-LIBAN,** ***P.J.,*** **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
MAJOR SHOPPING MANAGEMENT CORPORATION, Respondent.	Promulgated: FEB 12 2026 4:30pm

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DECISION

BACORRO-VILLENA, J.:

Pursuant to Section 2(a)(1)[1], Rule 4, in relation to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), the Commissioner of Internal Revenue (**petitioner/CIR**) filed this present Petition for Review[3] before the Court *En Banc* to seek

[1] SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry and Department of Agriculture[.]

[2] SEC. 3. *Who may appeal; period to file petition.* —
...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.

[3] Filed on 16 August 2024, *rollo*, pp. 1-15.

the reversal of the Special Third Division's Decision[4] promulgated on 25 April 2024 (**assailed Decision**) and its Resolution[5] issued on 19 July 2024 (**assailed Resolution**).

In the assailed Decision and Resolution, the Special Third Division granted respondent Major Shopping Management Corporation's (**respondent**'s) prior Petition for Review[6] (initially filed with the Third Division) and cancelled the undated Final Decision on Disputed Assessment[7] (**FDDA**). The FDDA assessed the latter for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), withholding tax on compensation (**WTC**), documentary stamp tax (**DST**) and improperly accumulated earnings tax (**IAET**) in the total amount of ₱7,596,597,877.91 for taxable year (**TY**) 2010. The breakdown of the alleged deficiency taxes is as follows:

IT	₱ 5,767,947,396.00
VAT	1,642,434,645.27
EWT	118,366,060.18
WTC	29,096,486.38
DST	318,342.90
IAET	38,434,947.18
Total	₱ 7,596,597,877.91

As the case records bear, petitioner is the duly appointed CIR, head of the Bureau of Internal Revenue (**BIR**), who is tasked to decide disputed assessments, refunds of internal revenue taxes, fees or charges, and penalties imposed in relation thereto. He or she may be served with notices, pleadings, resolutions, orders, decisions, and other legal processes at the BIR National Office Bldg., Agham Road, Diliman, Quezon City.[8] Respondent, on the other hand, is a corporation duly organized and existing under the laws of the Philippines, with address at SM Megamall Building, EDSA corner Wack Wack, Mandaluyong City.[9] It is registered with the Securities and Exchange Commission (**SEC**) with Company Registration No. CS201304622.[10]

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4 Division Docket, Volume V, pp. 2381-2400. Penned by Associate Justice Maria Rowena Modesto-San Pedro with the concurrence of Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Corazon G. Ferrer-Flores.

5 Id., pp. 2434-2435.

6 Division Docket, Volume I, pp. 10-75.

7 Exhibit "P-7", id., pp. 391-400.

8 See par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (**JSFI**), id., Volume II, pp. 952-961.

9 See par. 3, Summary of Admitted Facts, JSFI, id., pp. 952-953.

10 Id.

The antecedent facts follow.

On 21 September 2011, respondent received Letter of Authority (**LOA**) No. LOA-116-2011-00000048 (eLA201100002965) dated 20 September 2011,[11] which authorized Revenue Officers (**ROs**) Gilquin Tolentino (**Tolentino**), Ruby Anne Oradia (**Oradia**), Amelie Molinos (**Molinos**), Aurelio Zamora (**Zamora**), Jan Andre Abellera (**Abellera**), Johnro Galicia (**Galicia**) and Group Supervisor (**GS**) Edgar Espiritu (**Espiritu**) of the Large Taxpayer (**LT**) Regular Audit Division 1, to examine the former's books of account and accounting records for all internal revenue taxes for the period 01 January 2010 to 31 December 2010, or TY 2010.

During the audit, respondent executed a first (1st) Waiver of the Defense of Prescription under the Statute of Limitations (**waiver**) of the National Internal Revenue Code (**NIRC**) of 1997, as amended,[12] on 23 September 2013 to extend the period of assessment until 30 June 2014. Then Officer-in-Charge (**OIC**) Assistant Commissioner of LT Services Alfredo V. Misajon (**Asst. Comm. Misajon**) accepted the 1st waiver on 02 October 2013, a copy of which respondent received on 07 October 2013.

Thereafter, or on 08 March 2014, a second (2nd) waiver[13] also sought to extend the period of assessment until 30 September 2014. Then OIC Asst. Comm. Misajon accepted the 2nd waiver on 27 March 2014. Respondent received the copy of the 2nd waiver on 28 May 2014.

On 18 July 2014, the third (3rd) waiver[14] was executed to extend the period of assessment until 31 December 2014. Then OIC Asst. Comm. Nestor Valeroso (**Valeroso**) accepted it on 04 August 2014 after which respondent received a copy thereof on 28 August 2014.

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11 Exhibit "R-1", BIR Records, p. 1.
12 Exhibit "R-4", id., p. 199.
13 Exhibit "R-5", id., p. 200.
14 Exhibit "R-9", id., p. 278.

Subsequently, petitioner issued the Preliminary Assessment Notice (**PAN**) dated 04 August 2014[15], with the Details of Discrepancies[16] initially assessing respondent with deficiency taxes in the amount of ₱4,652,819,965.65. Respondent received the said notice on 15 August 2014. In response to the PAN, on 01 September 2014, respondent filed a letter[17] (of even date) before the office of the LT service to contest the deficiency tax assessments.

On 21 October 2014, the parties executed the fourth (4^{th}) waiver[18] to extend the period of assessment until 31 March 2015. Again, OIC Asst. Comm. Valeroso accepted it on 20 November 2014. Respondent received a copy of the 4^{th} waiver on 25 November 2014. Thereafter, on 13 February 2015, petitioner issued the Formal Letter of Demand[19] (**FLD**), Details of Discrepancies[20] and Assessment Notices[21] (**ANs**) which maintained the deficiency tax assessments against respondent.

Aggrieved, on 16 March 2015, respondent filed its Protest[22] (by way of a request for reinvestigation). It also submitted additional documents to dispute each item in the tax assessments.

On 03 November 2015, respondent received the undated FDDA,[23] Details of Discrepancies[24] and ANs[25] (attached to the FDDA) requesting the payment of the alleged deficiency taxes. The FDDA also advised respondent that it may appeal the deficiency tax assessments before the Court of Tax Appeals (**CTA**) or file a motion for reconsideration (**MR**) before the CIR.

On 03 December 2015, respondent filed an MR[26] with the Office of the CIR to oppose each item of the tax assessments. Nonetheless, on 05 February 2016, then CIR Kim S. Jacinto-Henares (**Henares**) issued

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15 Exhibit "R-7", id., pp. 242-245.
16 Id., pp. 236-241.
17 Id., pp. 281-343.
18 Exhibit "R-10", id., p. 280.
19 Exhibit "R-13", id., p. 393-396.
20 Id., pp. 381-386.
21 Id., pp. 387-392.
22 Exhibit "P-6", Division Docket, Volume I, pp. 300-374.
23 Exhibit "P-7-1", supra at note 7.
24 Division Docket, Volume I, pp. 395-400.
25 Id., pp. 401-406.
26 Exhibit "P-8", id., pp. 407-474.

the Final Decision[27] denying respondent's MR for lack of merit. Respondent received the said Final Decision on 17 February 2016.[28]

On 18 March 2016, respondent (then petitioner) filed a Petition for Review[29] with the Court. The case was docketed as CTA Case No. 9300 entitled "*Major Shopping Management Corporation v. Commissioner of Internal Revenue*". It was raffled to the Third Division.[30]

Thereafter, the Third Division directed respondent to submit the originals or certified true copies of the attachments in the said petition.[31] After its due compliance,[32] Summons[33] was issued.

On 22 June 2016, petitioner filed his or her Answer.[34] There, petitioner alleged that: (1) the Court lacks jurisdiction over the case as the prior petition was filed out of time; (2) an LOA was issued to authorize the named ROs to conduct an audit of respondent's books; (3) the period of assessment had yet to prescribe when it issued the FLD; and (4) the assessments are duly supported with factual and legal bases. Considering all the arguments, petitioner prayed for the dismissal of the case.

Initially, the pre-trial conference was set on 18 October 2016.[35] However, due to respondent's requests for postponements, prompted by its supposed need to examine voluminous documents relevant to the case,[36] the hearing only proceeded on 14 March 2017.[37] Prior thereto, the parties filed their respective Pre-Trial Briefs.[38] A Joint Stipulation of Facts and Issues (**JSFI**) was also filed on 04 April 2017.[39] Later, the

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27 Exhibit "P-9", id., p. 475.
28 Exhibit "P-9-1", id.
29 Supra at note 6.
30 Then composed of Associate Justice Lovell R. Bautista (Ret.) as chairperson, Associate Justice Esperanza R. Fabon-Victorino (Ret.) and (then Associate Justice) Presiding Justice Ma. Belen M. Ringpis-Liban.
31 See Resolution dated 07 April 2016, Division Docket, Volume I, pp. 283-284.
32 See Resolution dated 18 May 2016, id., Volume II, pp. 569-570.
33 Id., pp. 571-572.
34 Id., pp. 580-604.
35 See Notice of Pre-Trial Conference dated 23 June 2016, id., pp. 606-607.
36 See Urgent Motion to Defer Pre-Trial Conference filed on 08 September 2016, id., pp. 679-682; Urgent Motion to Defer Pre-Trial Conference filed on 22 December 2016, id., pp. 686-689.
37 See Resolution dated 11 January 2017, id., p. 692.
38 See [Petitioner's] Pre-Trial Brief, id., pp. 670-677; [Respondent's] Pre-Trial Brief, id., pp. 693-706.
39 Id., pp. 952-961.

Pre-Trial Order was issued on 27 April 2017.[40] Afterwards, respondent elevated the BIR Records of the case to this Court.[41]

When the trial proper ensued, respondent presented two (2) witnesses namely: (1) Annalyn E. Cayetano (**Cayetano**), respondent's then Regional Controller; and (2) Rosario S. Bernaldo (**Bernaldo**), the Court-commissioned Independent Certified Public Accountant (**ICPA**).

On the witness stand, Cayetano testified that: (1) as the previous Regional Controller, apart from ensuring that respondent is compliant with tax rules and regulations, she also handled the BIR audits; (2) in relation to the subject tax assessments, she prepared the reconciliations to explain the noted discrepancies (*e.g.*, the alleged undeclared sales, understated income, overstated costs and/or deductions, and undeclared sources of cash) among respondent's documents such as its IT returns and EWT returns; and (3) all of petitioner's findings are erroneous as the latter failed to capture the correct and complete details of respondent's books of accounts.[42]

On cross-examination, Cayetano explained that respondent made reconciliations on petitioner's findings which it later submitted to the BIR.[43] No redirect examination was conducted.[44]

ICPA Bernaldo took the witness stand next. In her Judicial Affidavit[45], she testified that, in addition to the ICPA Report dated 06 October 2017,[46] she also filed a Supplemental ICPA Report dated 15 May 2018.[47] In the said reports, she claimed that out of the alleged deficiency tax liabilities of ₱7,596,597,877.91, respondent is liable for the deficiency taxes of ₱25,775,094.77, computed as follows:[48]

40 See Pre-Trial Order, id., pp. 979-988.
41 See Compliance filed on 25 April 2017, id. pp. 971-972.
42 See Exhibit "P-15", Judicial Affidavit of Annalyn E. Cayetano, id., Volume II, pp. 713-722.
43 TSN dated 03 July 2017, pp. 6-7.
44 Id.
45 Exhibit "P-55", Judicial Affidavit of Rosario S. Bernaldo, Division Docket, Volume IV, pp. 1812-1829.
46 Exhibit "P-50", id., pp. 1755-1806.
47 Exhibit "P-51", id., pp. 1807-1811.
48 See Q&A No. 23 in Judicial Affidavit of Rosario S. Bernaldo, supra at note 45, p. 1819.

	Tax Type	Deficiency Tax Due	Interest	Total
A	IT	₱ 1,035,929.32	₱ 958,731.3	₱ 1,994,660.63
B	VAT	11,068,909.98	10,183,397.18	21,252,307.16
C	EWT	1,243,173.84	966,610.24	2,209,784.08
D	WTC	-	-	-
E	IAET	-	-	-
F	DST	160,757.00	157,585.90	318,342.90
	Total	₱ 13,508,770.14	₱ 12,266,324.62	₱ 25,775,094.77

On cross-examination, ICPA Bernaldo stated that she relied on the telecommunications companies' certifications to prove the nature of transactions of the prepaid cards that were placed at respondent's premises. Based on these certifications, respondent received an eight percent (8%) commission on every sale of the prepaid cards made to its customers. However, she admitted that she could not check each transaction for lack of supporting documents. As for the discount fees, ICPA Bernaldo confirmed that these are deductions from respondent's gross receipts.

ICPA Bernaldo also explained that respondent uses an accrual method in recording expenses. Nevertheless, it only affected the time when the expense was recognized, and it did not change the amount of the actual expense that respondent incurred.[49] No redirect examination was conducted.[50]

After all of respondent's witnesses were presented, it filed its Formal Offer of Evidence (**FOE**), consisting of Exhibits "**P-1**" to "**P-150**", with sub-markings.[51] Even without much objection from petitioner,[52] the Third Division denied some of the offered exhibits for failure to locate the marked exhibit and/or failure to identify the offered exhibit.[53]

Dissatisfied, respondent filed an "Omnibus Motion for Reconsideration (with Motion to Reopen Proceedings)"[54] (**Omnibus MR with Motion to Reopen**). Without petitioner's Comment,[55] the

49 TSN dated 28 August 2018, pp. 9-32.
50 Id.
51 See Formal Offer of Evidence filed on 16 November 2018, Division Docket, Volume IV, pp. 1494-1515.
52 See Comment (Re: [Respondent's] Formal Offer of Evidence), id., pp. 1831-1833.
53 See Resolution dated 26 February 2019, id., pp. 1845-1849.
54 Filed on 15 March 2019; id., pp. 1855-1865.
55 See Records Verification dated 09 May 2019, id., p. 1899.

Third Division granted the Omnibus MR and the Motion to Reopen.[56] Accordingly, respondent presented Elizabeth Ann D. Yu (**Yu**) to identify some of the denied exhibits.[57] No cross-examination was conducted.[58] Respondent also recalled ICPA Bernaldo to identify the USB that contained the other exhibits.[59] Likewise, no cross-examination was conducted.[60]

Subsequently, respondent filed its Supplemental [FOE][61] and Addendum to the Supplemental FOE.[62] Without petitioner's Comment,[63] the Third Division still denied the other exhibits for not being found in the USB.[64] Still dissatisfied, respondent filed an MR and contended that the denied exhibits were poorly scanned, thus it attached a compact disc which contained the rescanned exhibits.[65] Finding merit in respondent's MR, the Third Division finally admitted the previously denied exhibits.[66]

For petitioner's part, RO Oradia took the witness stand to debunk respondent's claims. She testified that: (1) she was one of the ROs duly authorized (through a valid LOA) to conduct an audit on respondent's books; (2) a series of waivers extended the periods of assessment; (3) after her investigation, she recommended the issuance of the PAN, FLD and FDDA; and (4) her audit findings were summarized in the Details of Discrepancies duly attached to the notices.[67]

On cross-examination, RO Oradia confirmed that there are no dates appearing on the FLD and the ANs.[68] Similarly, she also confirmed that there are no due dates in the FDDA and in the attached ANs thereto.[69] No redirect examination was conducted.[70]

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56 See Resolution dated 13 June 2019, id., pp. 1903-1905.

57 See Exhibit "P-12", Supplemental Judicial Affidavit of Elizabeth Ann D. Yu, id., pp. 1917-1922.

58 See TSN dated 10 September 2019, p. 8.

59 See Exhibit "P-56", Supplemental Judicial Affidavit of Rosario S. Bernaldo, Division Docket, Volume IV, pp. 1938-1945.

60 See TSN dated 10 September 2019, p. 15.

61 Filed on 19 September 2019, Division Docket, Volume IV, pp. 1950-1957.

62 Filed on 20 September 2019, id., pp. 1962-1964.

63 See Records Verification dated 18 October 2019, id., p. 1969.

64 See Resolution dated 28 November 2019, id., pp. 1973-1975.

65 Filed on 20 December 2019, id., pp. 1976-1980.

66 See Resolution dated 18 February 2020, id., Volume V, pp. 2000-2003.

67 See Judicial Affidavit of Revenue Officer Ruby Ann B. Oradia, id., Volume III, pp. 1475-1488.

68 TSN dated 13 October 2021, pp. 6-11.

69 TSN dated 11 November 2021, pp. 7-9.

70 Id., p. 19.

Thereafter, petitioner filed his or her FOE, consisting of Exhibits "**R-1**" to "**R-20**", with sub-markings.[71] Meanwhile, respondent filed a Supplemental FOE[72] to offer the table of contents of the BIR Records; and a Motion for Presentation of Rebuttal Evidence (**Motion for Rebuttal**).[73]

Acting on the pending incidents, in a Resolution dated 23 March 2022,[74] the Third Division admitted petitioner's evidence (over respondent's objections).[75] As for the Supplemental FOE, without petitioner's Comment,[76] the Third Division also admitted the same.[77] Later on, without petitioner's objection,[78] the Third Division also granted respondent's Motion for Rebuttal.[79]

Consequently, respondent recalled Yu and she identified the supporting documents attached to the former's Protest Letter. She also claimed that the BIR failed to consider the arguments, explanations and the supporting documents in respondent's Protest Letter since most of the tax assessments in the FLD and FDDA were maintained without any sufficient justification.[80]

On cross-examination, Yu stood by her declarations that the BIR failed to consider respondent's arguments. She stressed that in the FLD and the FDDA, the BIR failed to provide any explanations as to why they maintained the tax assessments despite the reconciliations submitted to them. Yu also claimed that despite the increases or decreases in the amount of tax liabilities, the BIR also failed to discuss such significant changes.[81]

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[71] See Formal Offer of Evidence filed on 24 November 2021, Division Docket, Volume V, pp. 2134-2142.
[72] Filed on 01 December 2021, id., pp. 2145-2150.
[73] Filed on 18 February 2022, id., pp. 2158-2161.
[74] See Resolution dated 23 March 2022, id., pp. 2169-2170.
[75] See Comment (on [Petitioner's FOE] dated November 23, 2021), id., pp. 2153-2155.
[76] See Records Verification Report dated 16 February 2022, id., p. 2157.
[77] See Resolution dated 23 March 2022, supra at note 74.
[78] See Records Verification Report dated 04 May 2022, Division Docket, Volume V, p. 2171.
[79] See Resolution dated 10 June 2022, Division Docket, Volume V, p. 2175.
[80] See Exhibit "P-67", Supplemental Judicial Affidavit of Elizabeth Ann D. Yu, id., pp. 2183-2194.
[81] TSN dated 30 August 2022, pp. 4-8.

On redirect examination, Yu reiterated that the BIR did not explain the changes in the FDDA, especially the additional tax assessment.[82] No re-cross examination was conducted.[83]

Respondent then filed a Supplemental [FOE] with Motion to Set Additional Commissioner's Hearing[84] to offer additional exhibits. Without petitioner's Comment,[85] the Third Division admitted them.[86] Following the termination of the presentation of evidence for both parties, they filed their respective Memoranda.[87] Thereafter, the case was submitted for decision.[88]

On 25 April 2024, the Special Third Division promulgated the now assailed Decision[89] which granted respondent's prior Petition for Review. In so ruling, the Special Third Division found that the FLD and ANs did not indicate the due date for the payment of the alleged tax liabilities, thus the said notices were invalidated. Moreover, the Special Third Division observed that the FDDA did not provide reasons for rejecting respondent's explanations and arguments in its Protest, which also rendered the FDDA void. The dispositive portion of the assailed Decision reads –

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> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the undated Final Decision on Disputed Assessment, received by [respondent] on November 3, 2015, and the Assailed Decision, dated February 5, 2016, assessing [respondent] for deficiency income tax VAT, EWT, WTC, IAET and DST in the aggregate amount of ₱7,596,597,878.01, for the taxable year 2010 is **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**
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> ...

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[82] Id., pp. 8-10.
[83] Id., p. 10.
[84] Filed on 08 September 2022, Division Docket, Volume V, pp. 2200-2208.
[85] See Records Verification dated 18 October 2022, id., p. 2214.
[86] See Resolution dated 06 February 2023, id., p. 2224.
[87] See [Petitioner's] Memorandum filed on 17 March 2023, id., pp. 2241-2274; [Respondent's] Memorandum filed on 03 April 2023, id., pp. 2276-2376.
[88] See Minute Resolution dated 26 April 2023, id., p. 2378.
[89] Supra at note 4.

On 15 May 2024, petitioner filed an MR[90] advancing two (2) arguments in the bid to have the assailed Decision reversed. *First*, there was an unequivocal demand against respondent to pay its tax liabilities. *Second*, the BIR officers examined and considered respondent's arguments in its Protest Letter. Petitioner went further contending that the findings thereon were summarized in the Memoranda found in the BIR Records.

The Special Third Division was unconvinced. On 19 July 2024, it issued the assailed Resolution which denied the MR for lack of merit.[91] Petitioner, through the Office of the Solicitor General (**OSG**), received the assailed Resolution on 07 August 2024.[92]

Unsatisfied with the Special Third Division's actions, petitioner filed the present petition before the Court *En Banc* on 16 August 2024.[93] With the filing of respondent's Comment on the petition[94] and after the parties agreed not to have the case mediated,[95] the Court submitted the case for decision.[96]

Before the Court *En Banc*, petitioner assigns the following errors to the Special Third Division's actions —

I.
WHETHER THE SPECIAL THIRD DIVISION ERRED IN RULING THAT THE ASSESSMENT NOTICES AGAINST RESPONDENT IS A NULLITY FOR ALLEGEDLY NOT INDICATING A DEFINITE DUE DATE FOR THE PAYMENT OF ITS TAX LIABILITIES.

II.
WHETHER THE SPECIAL THIRD DIVISION ERRED IN RULING THAT THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) FAILED TO PROVIDE REASONS FOR THE REJECTION OF THE EXPLANATIONS AND DEFENSES OF THE TAXPAYER, RENDERING IT VOID.[97]

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90 See Motion for Reconsideration [Re: Decision promulgated 25 April 2024], Division Docket, Volume V, pp. 2401-2411.
91 Supra at note 5.
92 See Notice of Resolution dated 23 July 2024, Division Docket, Volume V, p. 2433.
93 Supra at note 3.
94 See Comment (To Petitioner's Petition for Review Dated August 15, 2024) filed on 05 December 2024, *rollo*, pp. 45-67.
95 No Agreement to Mediate, id., p. 70.
96 See Notice of Resolution dated 12 February 2025, id., p. 70.
97 See Assignment of Errors, Petition for Review, supra at note 3, p. 3.

In support of the instant petition, petitioner substantially reiterates the arguments in his or her prior MR. Citing the Supreme Court's decision in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[98] (**Fitness by Design**), which applied the case of *Commissioner of Internal Revenue v. Dominador Menguito*[99] (**Menguito**), petitioner insists for the Court *En Banc* to revisit the same to come up with the correct ruling. Petitioner maintains that the main issue in *Menguito* pertains to whether the taxpayer had received the post-reporting notice and pre-assessment notice, and not the final assessment notice (**FAN**) or FLD (such as in the instant case). Thus, the said cases are inapplicable, and respondent should not benefit therefrom.

Petitioner adds that the FLD already contained the definite amount of respondent's tax liabilities. It also carried an unequivocal demand for payment. According to petitioner, only the interest will be adjusted depending on the time that the deficiency taxes are paid. Hence, it was an error for the Special Third Division to have concluded the absence of a notice to pay for respondent.

On the second issue, petitioner stresses that RO Oradia summarized all her findings (on the Protest Letter) in the Memoranda which recommended for the issuance of the FLD and the FDDA. Thus, all of respondent's arguments and defenses were duly considered but were, nevertheless, regarded as unmeritorious and unsubstantial to cancel the deficiency tax assessments.

On the other hand, respondent implores the Court *En Banc* to deny petitioner's plea for relief. For respondent, petitioner merely rehashed the issues which the Special Third Division had already discussed and passed upon in both the assailed Decision and assailed Resolution.

Respondent also contends that the judicial pronouncement in *Fitness by Design* has the force and binding effect as the law itself, pursuant to Article 8 of the New Civil Code and the principle of *stare decisis*. Apart from it, respondent emphasizes that the Supreme Court subsequently reaffirmed the ruling in *Fitness by Design* in the recent

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[98] G.R. No. 215957, 09 November 2016.

[99] G.R. No. 167560, 17 September 2008.

cases of *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[100] (**T Shuttle Services**) and *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation*[101] (**First Gas Power**). In both cases, the Supreme Court unequivocally ruled that FANs that do not indicate a specific period to pay the taxes are void and without legal effect. Thus, petitioner's FLD should be struck down as equally void and the tax assessments, invalid.

Respondent also echoes the Special Third Division's declarations and claims that even if RO Oradia prepared the Memoranda (which recommended the issuance of the FLD and the FDDA), the same are internal documents circulated among the BIR personnels only. These then did not cure the absence of notice to respondent. Without a clear explanation or discussion of the retention of the tax assessments in the FLD and the modifications made in the FDDA, petitioner has, without doubt, violated its right to due process.

We resolve.

Before We proceed to resolve the merits of the case, We deem it propitious to first determine whether this Court has jurisdiction over the instant petition.

THE INSTANT PETITION FOR REVIEW
WAS TIMELY FILED.

Section 18 of Republic Act (**RA**) No. 1125.,[102] as amended by RA 9282,[103] provides that a party adversely affected by a resolution of a Division of the CTA on MR or new trial, may file a Petition for Review with the Court *En Banc*.

Section 3(b)[104], Rule 8 of the RRCTA states that the party affected should file the Petition for Review within fifteen (15) days from receipt

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100 G.R. No. 240729, 24 August 2020.
101 G.R. No. 214933, 15 February 2022.
102 AN ACT CREATING THE COURT OF TAX APPEALS.
103 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
104 Supra at note 2.

of a copy of the questioned decision or resolution. Applying the foregoing, petitioner (through the OSG) received the assailed Resolution on 07 August 2024.[105] Counting 15 days therefrom, petitioner had until 22 August 2024 to file the present Petition for Review. As the instant petition was filed on 16 August 2024[106], the Court *En Banc* has successfully acquired jurisdiction over the instant case.

We, thus, proceed to discuss petitioner's arguments in support of this instant petition.

THE FINAL LETTER OF DEMAND (FLD) AND THE ASSESSMENT NOTICES (ANs) ARE VOID DUE TO THE ABSENCE OF A DEFINITE DATE FOR PAYMENT.

Petitioner vehemently claims that the FLD contained not only a categorical demand for the payment of the tax but also a definite amount of the basic tax due. Thus, any adjustment thereto will only be on the interest which can be computed easily.

We disagree.

At the outset, We are not convinced that the ruling in *Fitness by Design*[107] has been misapplied. Contrary to his or her claim that the said case pertains to post-reporting notice and pre-assessment notice, there is a categorical declaration that the absence of due dates in the FAN renders the same void for lack of due process.

Also, in the case of *Pepsi-Cola Products Philippines, Incorporated and Pepsico Incorporated v. Pepe B. Pagdanganan and Pepito A. Lumajan,*[108] the Supreme Court explained that unless its judicial decision has been abandoned, the same shall be applied with the same authority as a law itself –

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105 Supra at note 92.
106 Supra at note 3.
107 Supra at note 98.
108 G.R. No. 167866, 16 October 2006.

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> **The doctrine of *stare decisis* embodies the legal maxim that a principle or rule of law which has been established by the decision of a court of controlling jurisdiction will be followed in other cases involving a similar situation. It is founded on the necessity for securing certainty and stability in the law and does not require identity of or privity of parties.** This is unmistakable from the wordings of Article 8 of the Civil Code. It is even said that such decisions "assume the same authority as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria which must control the actuations not only of those called upon to decide thereby but also of those in duty bound to enforce obedience thereto." Abandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished.[109]
>
> ...

As respondent observed correctly, *Fitness by Design*[110] is still a binding judicial pronouncement that has been cited and reiterated in recent Supreme Court decisions. Relative thereto, in *T Shuttle Services,*[111] the Supreme Court affirmed Our ruling that the FAN and ANs are void for failure to demand the payment of taxes within a specific period. The pertinent portion provides –

> ...
>
> Besides, even granting that the PAN and the FAN were properly and duly served upon and received by respondent the Court affirms the CTA *En Banc*'s ruling that the FAN and the assessment notices attached to it are still void for failure to demand payment of the taxes due within a specific period.
>
> As held in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*:
>
> > A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and *must demand payment of the taxes described therein within a specific period.*"

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109 Citations omitted, emphasis supplied and italics in the original text.
110 Supra at note 98.
111 Supra at note 100.

> In this case, the CTA *En Banc* observed that the last paragraph of the FAN indicates that the CIR would still issue a formal letter of demand and assessment notice should respondent fail to respond to the FAN within the 15-day period given to it to present in writing its side of the case. **However, the CTA *En Banc* found nothing in the record that reveals that the CIR had issued a final demand containing a specific or definite period of payment following the expiration of the 15-day period given to respondent to respond to the FAN. Further, the CTA *En Banc* observed that the assessment notices attached to the FAN also did not prescribe a definite period for respondent to pay the alleged deficiency taxes.**
>
> ...

Additionally, in the case of *First Gas Power Corporation,*[112] citing *Fitness by Design,*[113] the Supreme Court reaffirmed that a FAN or FLD that failed to indicate a definite due date for payment are void –

> ...
>
> As regards the validity of the FAN and the Formal Letter of Demand for taxable year 2001, this Court also agrees with the ruling of the CTA that the same were not valid because they failed to indicate a definite due date for payment.
>
> In *Commissioner of Internal Revenue v. Fitness by Design, Inc.,* this Court held that a Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer, thus:
>
>> **Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>>
>>> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>>
>> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

[112] Supra at note 101.
[113] Supra at note 98.

> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

Similarly, in this case, as pointed out by the CTA, the last paragraph of each of the assessments stated the following:

> In view thereof, you are requested to pay your aforesaid deficiency income tax liability/penalties through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

However, the due date in each of the FAN was left blank. Clearly, the FAN did not contain a definite due date and actual demand to pay. Accordingly, the FAN and the Formal Letter of Demand for taxable year 2001 are not valid assessments.

In sum, the CTA did not err in cancelling the FAN and the Formal Letters of Demand, all dated July 19, 2004. They are all invalid assessments because the period of petitioner to issue the same for taxable year 2000 has already prescribed, and the **assessments for taxable year 2001 did not contain a definite due date for payment by respondent.**[114]

...

Applying the foregoing in this case, it is evident that the FLD and the ANs issued to respondent did not contain any definite due date for payment especially so that the spaces provided therefor were also left blank. RO Oradia, petitioner's own witness, has confirmed this to be so during her cross-examination. Her testimony tells —

...

ATTY. MANAIG

...

Q Further, going back to the FLD on the paragraph appearing on the last page of the FLD, there is this paragraph which says, in view thereof, you are requested to pay your aforesaid deficiency tax liability using the BIR Payment Form, the BIR Form 0605 through EFPS within the time shown in the enclosed assessment notice. Is that correct?

[114] Citations omitted, emphasis supplied and in the original text and italics in the original text.

[RO] ORADIA

A Yes, sir.

ATTY. MANAIG

Q Now, I am showing to you the aforementioned assessment notices, in particular this assessment notice which is attached to the FLD which is for income tax. Below it there is a word due date. Is indicated here the due date for which the petitioner should settle its tax?

[RO] ORADIA

A No, it is not.

ATTY. MANAIG

Q On the lower portion of the same assessment notice for income tax, there appears again the word due date. Is there any date affixed in the assessment notice?

[RO] ORADIA

A None, sir.

ATTY. MANAIG

Q Similarly, in the assessment notice for improperly accumulated earnings tax, there is a portion for the due date. Is there any date mentioned?

[RO] ORADIA

A None, sir.

ATTY. MANAIG

Q For value added tax, there is again a due date provided, there is a portion of the assessment notice for the due date. Is there any due date mentioned?

[RO] ORADIA

A None, sir.

ATTY. MANAIG

Q For expanded withholding tax, again is there a due date mentioned in the assessment notice?

[RO] ORADIA

A None, sir.

ATTY. MANAIG

Q For withholding tax [on] compensation, is there a due date mentioned in the assessment notice?

[RO] ORADIA

A None also, sir.

ATTY. MANAIG

Q Also on the documentary stamp tax, is there a due date affixed in the assessment notice?

[RO] ORADIA

A None, sir.[115]

...

Our own careful and repeated scrutiny yields similar result — the FDDA and the corresponding ANs did not reflect any due date for the payment of respondent's alleged deficiency taxes. Similarly, in RO Oradia's cross-examination, she declared –

...

Q: For the FDDA, there is – the Audit Result or Assessment Notice attached to the FDDA for the income tax, I am highlighting a certain portion with the label due date, could you please confirm that the said space for the due date is blank?

A: Yes, it's left blank.

Q: Thank you, Ms. Witness, again the assessment notice for Value added tax, could you please confirm that the due date is left blank?

A: Yes, it's left blank.

Q: For the Assessment Notice on Withholding Tax Expanded, the due date is left blank, is that correct?

A: Yes.

---

115 TSN dated 13 October 2021, pp. 9-11.

[Q]: On the Assessment Notice for Withholding Tax and compensation, the due date is left blank?

[A]: Yes, attorney.

Q: For the Assessment Notice on improperly accumulated earnings tax, the due date is left blank, is that correct?

A: Yes, attorney.

Q: For the assessment notice on Documentary Stamp Tax, the due date is again left blank is that correct?

A: Yes, attorney.[116]

...

Inarguably, petitioner's FLD and ANs could only be rendered void and without any legal effect. As a result, the assessments against respondent bear no valid fruit.[117] As the Court *En Banc* finds the tax assessments against respondent void, a discussion of the other issue has become unnecessary as the same could no longer change the outcome of this instant case.

WHEREFORE, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 16 August 2024 is **DENIED** for lack of merit. Consequently, the assailed Decision dated 25 April 2024, and the assailed Resolution dated 19 July 2024, of the Special Third Division in CTA Case No. 9300, are hereby **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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116 TSN dated 11 November 2021, pp. 8-9.
117 *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, 26 November 2014.

x - x

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice